

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION
)	No. 85-0489-RGS
MASSACHUSETTS WATER)	
RESOURCES AUTHORITY)	
)	
Defendant,)	
)	
and)	
)	
COMMONWEALTH OF MASSACHUSETTS,)	
)	
Statutory Party required by)	
33 U.S.C. § 1319(e).)	

SUPPLEMENTAL COMPLAINT

Plaintiff, the United States of America, through its undersigned attorneys, and at the request of the Administrator of the United States Environmental Protection Agency (“EPA”), alleges as follows:

INTRODUCTION

1. This is a civil action brought against the Massachusetts Water Resources Authority (“MWRA”) pursuant to Sections 309(b) and (d) of the Clean Water Act (“CWA” or the “Act”), 33 U.S.C. §§ 1319(b) & (d).
2. The claims arise from the MWRA’s failure to comply with certain conditions of its National Pollutant Discharge Elimination System permit issued in accordance with Section 402 of the CWA, 33 U.S.C. § 1342.
3. This Court has jurisdiction over the subject matter of this action pursuant to Sections 309(b) and (d) of the CWA, 33 U.S.C. §§ 1319(b) & (d), and pursuant to 28 U.S.C.

§§ 1331, 1345 & 1355.

4. Venue is proper in this district pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), 28 U.S.C. § 1391(b), and 28 U.S.C. § 1395.

5. Notice of the commencement of this action has been given to the Commonwealth of Massachusetts pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b).

DEFENDANT

6. The Massachusetts Water Resources Authority is an independent Massachusetts public authority created by the Massachusetts legislature in 1984 to provide wholesale water and sewer services to communities in the Greater Boston metropolitan area.

7. The MWRA is a public body created by or pursuant to State law having jurisdiction over disposal of sewage and, therefore, a “municipality” within the meaning of Section 502(4) of the Clean Water Act, 33 U.S.C. § 1362(4), and a “person” within the meaning of Section 502(5) of the Clean Water Act, 33 U.S.C. § 1362(5).

NECESSARY PARTY

8. Section 309(e) of the Act, 33 U.S.C. § 1319(e), provides:

Whenever a municipality is a party to a civil action brought by the United States under this section, the State in which such municipality is located shall be joined as a party. Such State shall be liable for payment of any judgment or any expenses incurred as a result of complying with any such judgment entered against the municipality in such action, to the extent that the laws of that State prevent the municipality from raising revenues needed to comply with such judgment.

The Commonwealth of Massachusetts is joined in this action as a necessary party pursuant to Section 309(e) of the Act, 33 U.S.C. § 1319(e). The United States reserves all claims which it

may have against the Commonwealth under Section 309(e).

CLEAN WATER ACT REQUIREMENTS AND NPDES PERMIT

9. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into navigable waters of the United States except in compliance with the terms and conditions of a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to CWA Section 402, 33 U.S.C. § 1342, or other authorization under the Clean Water Act. Section 308 of the Act, 33 U.S.C. § 1318, authorizes EPA to require reporting.

10. Section 402 of the Act, 33 U.S.C. § 1342, provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of any pollutant into the navigable waters of the United States upon such specific terms and conditions as the Administrator may prescribe.

11. Section 309(b) of the Act, 33 U.S.C. § 1319(b), authorizes the Administrator to commence a civil action for appropriate relief, including a permanent or temporary injunction, when any person is in violation of, inter alia, Section 301 of the Act, 33 U.S.C. § 1311, Section 308 of the Act, 33 U.S.C. § 1318, or any permit condition or limitation in a NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

12. Section 309(d) of the Act, 33 U.S.C. § 1319(d), provides that any person who violates Section 301 of the Act, 33 U.S.C. § 1311, violates Section 308 of the Act, 33 U.S.C. § 1318, or violates any permit condition or limitation in a NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342, shall be subject to a civil penalty not to exceed \$27,500 per day for each violation which takes place after January 30, 1997, but before March 15, 2004; and \$32,500 per day for each violation which takes place on or after March 15, 2004,

pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 note; Pub. L. 101-410), as amended by the Debt Collection Improvement Act of 1996 (31 U.S.C. § 3701 note; Pub. L. 104-134).

13. On May 20, 1999, pursuant to Section 402 of the Act, 33 U.S.C. § 1342, NPDES Permit No. MA0103284 (the "Permit") was issued to the MWRA for discharges of treated effluent from the MWRA's Deer Island Treatment Plant ("DITP") Outfall TO1 to Massachusetts Bay and for combined sewage from combined sewer overflow outfalls to the Charles River, Inner Harbor, Mystic River, Boston Harbor, Dorchester Bay, and Alewife Brook. A copy of the Permit is attached hereto as Exhibit 1. The Permit became effective on August 10, 2000, and expired on August 9, 2005. As the MWRA submitted a timely application for a new permit, the terms and conditions of the Permit remain in effect in accordance with 40 C.F.R. § 122.6.

14. The MWRA's DITP Outfall TO1 is a "point source" within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14).

15. Massachusetts Bay is a "navigable water" within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7).

COUNT 1

Bypassing and Failure to Provide Bypass Notices

16. The United States realleges and incorporates by reference the allegations of paragraphs 1 through 15 above as though fully set forth herein.

17. At all times material to this complaint, Part II, Section B.4. of the Permit has prohibited bypass (defined as "the intentional diversion of waste streams from any portion of a treatment facility") except where necessary for essential maintenance of facilities. The Permit

authorizes EPA to enforce this prohibition unless 1) the bypass was unavoidable to prevent loss of life, personal injury, or severe property, 2) there were no feasible alternatives to the bypass, and 3) the permittee submitted notice as specified in Part II.B.4.c. of the Permit.

18. After the DITP was fully operational in July 2001, the MWRA bypassed a portion of its flows around the secondary treatment portion of the DITP on several hundred days.

19. These bypasses were not necessary for essential maintenance of facilities.

20. These bypasses were not “unavoidable” within the meaning of the Permit.

21. There were feasible alternatives to these bypasses.

22. The MWRA did not submit notice of these bypasses in accordance with the specifications of Part II.B.4.c. of the Permit.

23. The wastewater the MWRA discharged to Massachusetts Bay from the DITP outfall TO1 that had bypassed secondary treatment contained “pollutants” within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6).

24. The MWRA’s bypasses of flows around the secondary treatment portion of the DITP as alleged in paragraphs 18 through 23 above were in violation of the Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a).

25. The MWRA’s failures to provide the bypass notices required under Part II.B.4.c. of the Permit as alleged in paragraphs 18 through 23 above were in violation of the Permit and Sections 301(a) and 308 of the Act, 33 U.S.C. §§ 1311, 1318.

COUNT 2

Failure to Properly Operate and Maintain Treatment Facilities

26. The United States realleges and incorporates by reference the allegations of

paragraphs 1 through 25 above as though fully set forth herein.

27. Part II., Section B.1. of the Permit provides, among other things, that “the permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and all related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit.”

28. For a period of eight months from June 2004 to January 2005, the MWRA failed to maintain seals on the “bypass gates” at Deer Island, resulting in leakage into the bypass channel diverting flows around secondary treatment facilities.

29. The MWRA installed polymer addition equipment at the DITP, designed to aid in providing secondary treatment at higher flow levels, but the MWRA did not operate such equipment when necessary to provide secondary treatment to higher flow levels.

30. The MWRA’s failures to maintain seals on the “bypass gates” and to operate polymer addition equipment at the DITP as alleged in paragraphs 28 and 29 above were in violation of the Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a).

COUNT 3

Failure to Properly Monitor Effluent Discharges

31. The United States realleges and incorporates by reference the allegations of paragraphs 1 through 15 above as though fully set forth herein.

32. At all times material to this complaint, Part I.1.a. of the Permit has required the MWRA to collect a 24-hour composite sample each day of effluent entering Outfall TO1 for monitoring specific pollutant parameters. Part II., Section E.1. of the permit defines “Composite Sample” as a “sample consisting of a minimum of eight grab samples collected at equal intervals during a 24-hour period (or lesser period as specified in the section on Monitoring and

Reporting) and combined proportional to flow, or a sample continuously collected proportionally to flow over that same time period” (emphasis added).

33. From August 10, 2000 (when the DITP permit became effective) to at least August 31, 2006, the MWRA conducted time-proportional sampling of effluent instead of conducting sampling that was combined proportional to flow or continuously collected proportionally to flow.

34. The wastewater the MWRA discharged to Massachusetts Bay from DITP Outfall TO1 during this period of improper monitoring contained “pollutants” within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6).

35. The MWRA’s failures to conduct flow proportional monitoring for the wastewater discharged to Massachusetts Bay from the DITP as alleged in paragraphs 33 and 34 above were in violation of the Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a).

RELIEF SOUGHT

Wherefore, Plaintiff, the United States of America, respectfully requests that the Court grant the following relief:

1. Order the MWRA to discontinue bypasses of secondary treatment facilities in violation of the Permit;
2. Order the MWRA to provide bypass notices as required under the Permit;
3. Order the MWRA to pay a civil penalty not to exceed \$27,500 per day for each violation occurring between January 30, 1997 and March 14, 2004, and \$32,500 per day for each violation occurring on or after March 15, 2004; and
4. Grant such other relief as the Court deems just and proper.

For the UNITED STATES OF AMERICA,

RONALD J. TENPAS
Assistant Attorney General
Environment and Natural Resources Division

MICHAEL J. SULLIVAN
United States Attorney

By:

Anton P. Giedt
Assistant U.S. Attorney
John J. Moakley Courthouse
1 Courthouse Way, Suite 9200
Boston, MA 02210
(617) 748-3309 (Voice)
(617) 748-3967 (Fax)
anton.giedt@usdoj.gov

By:

Elizabeth Yu
Attorney
U.S. Department of Justice - EES
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044-7611
(202) 514-2277

OF COUNSEL:

Michael Wagner
Assistant Enforcement Counsel
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region I
One Congress Street, Mail Code SEL
Boston, MA 02114-2023